the prosecution case they might have been killed because they were interfering with or were possible witnesses to the stealing of their absent mother's jewellery. In the circumstances we were of the opinion that the proper direction to the jury should have been that when considering the question of whether or not it was the appellant who did the killing they should disregard any evidence that went to show that the accused was the type of person who would do that very sort of thing.

Nevertheless we considered that in spite of the misdirection on this point no reasonable jury could on the evidence have come to any other conclusion than that it was the appellant who did the killing and we were accordingly of the opinion that no substantial miscarriage of justice had occurred and that the appeal should be dismissed by reason of the proviso to section 29(1) of the Courts Ordinance.

Appeal dismissed.

Solicitors: *Cheang Lee & Ong.*

PUBLIC PROSECUTOR v. LEONARD

[C. A. (Thomson C.J., Rigby and Ong JJ.) April 23, 1959]

[K. L. — F.M. Criminal Reference No. 3 of 1958]

Criminal Law and Procedure — Commencement of proceedings in Subordinate Courts — Jurisdiction to try criminal offences — "Information" and "complaint" distinguished — "Application for summons" and "complaint" may be same document — Taking cognisance of offence alleged — Question of whether or not complaint signed or in writing or whether it stated the facts constituting offence irrelevant — Police Form No. 52 commented upon.

Criminal Procedure Code (Cap.6), ss.128, 133, 134, 135 and 173 considered.

The Jurisdiction of Subordinate Courts to try criminal offences is not given by anything contained in the Criminal Procedure Code but by section 63 of the Courts Ordinance in the case of the Sessions Court and by section 85 of the same Ordinance in the case of the Court of a First Class Magistrate. The Criminal Procedure Code merely regulates the way in which that jurisdiction is to be exercised.

In connection with the commencement of criminal proceedings in a Magistrate's Court there are three things. There may be an application for a summons. A Magistrate may issue a summons in certain circumstances without a formal application and the Code does not in terms provide for the making of any application but that such an application may be made is clearly contemplated by section 133(ii). Then there may be an information and there may be a complaint, but an information and a complaint are entirely different things and the failure to distinguish between then can lead to very great confusion of thought. An information is a statement relating to the commission of an offence made to a Police Officer under section 107 of the Code and a complaint is an allegation made to a Magistrate with a view to his taking action under the Code.

The application for summons can also be the complaint on the basis of which the Magistrate must under section 128 take cognisance of the alleged offence. The questions whether or not it was signed or indeed was in writing at all or whether it stated the facts alleged to constitute the offence are wholly irrelevant and once it is made to him the Magistrate is bound to take cognisance of the offence alleged. Having taken cognisance of it he is bound to proceed to issue a summons if in his opinion there is sufficient ground for proceeding.

Cases referred to:—

(1) *Public Prosecutor* v. *Chia Chin Koon*, Muar Criminal Appeal No. 8 of 1956 — Unreported.

(2) *Public Prosecutor* v. *Tonkyn*, Kuantan Criminal Appeal No. 1 of 1958 — Unreported.

(3) *Public Prosecutor* v. *Brain*, Selangor Criminal Appeal No. 25 of 1958 — Unreported.

COURT OF APPEAL.

Bahaudin bin Mohd. Yacob (Federal Counsel) for the appellant.

P. Hall for the respondent.

Cur. Adv. Vult.

Thomson C.J.: This reference under section 34 of the Courts Ordinance raises a question as to the commencement of proceedings in Subordinate Courts.

On 8th December, 1957, a taxi driver named Hashim made a statement to a Police Officer relating to a collision between his vehicle and another vehicle.

On 28th January, 1958, the Police applied to the Magistrate at Sungei Patani for a summons against one George Russell Leonard on a charge of dangerous driving in contravention of section 4(1) of the Motor Vehicles (Driving Offences) Proclamation. This application was made on a form known as Police 52. The front of the form was headed "Application for Summons". It referred to the statement of the taxi driver, it alleged that Mr. Leonard had committed the offence of dangerous driving and it asked that a summons be issued against him for that offence. It concluded with the words "Application approved" initialled in ink by a Police Officer. On the reverse of the form was set out what was entitled "the information and complaint" of the taxi driver. This consisted of the statement which he had made to the Police on 8th December, 1957, and at the bottom were typed words to the effect that the original had been signed by him and by the Police Officer who recorded the statement. Presumably, though this is not stated on the record, the application was accompanied by a charge sheet and a form of summons for signature by the Magistrate.

The Magistrate thereupon signed and issued a summons in accordance with the application. This was served on Mr. Leonard and the trial commenced the same day as it was desired to have the evidence of a Police witness who was about to leave the country.

Mr. Leonard appeared and took no objection to this course. When charged he claimed trial and when the Police witness gave evidence he cross-examined him. The trial was then adjourned to 27th February.

When the trial was resumed on 27th February Mr. Leonard was represented by counsel who announced that he proposed to take the point that the complaint on the basis of which the summons had been issued was not signed and that the proceedings were accordingly a nullity. The trial was then again adjourned, with the

consent of both parties, to 26th May, 1958, to allow the Police to be represented by counsel.

On 26th May the matter was argued at length and in the event the Magistrate decided that the summons had been wrongly issued and that accordingly he had no jurisdiction to try the case. He therefore discharged the accused.

Against that decision the Public Prosecutor appealed. At the hearing of the appeal the attention of Hill J. was invited to the judgment of Buhagiar J. in the case of *Public Prosecutor* v. *Chia Chin Koon*,[1] to the judgment of Neal J. in the case of *Public Prosecutor* v. *Tonkyn*[2] and to the judgment of Smith J. in the case of *Public Prosecutor* v. *Brain*[3].

In *Chia Chin Koon's* case the facts were the same as in the present case except that counsel for the defendant had taken the point that the summons was wrongly issued before the defendant pleaded to the summons. In the application for summons the front of form Police 52 was signed but the statement on the reverse of the form which in that case was by a Police Officer was not signed. Buhagiar J. said that:—

> "If the complaint is reduced to writing it should be apparent from the writing who is the person making it and such person should assume responsibility for making it and this, in my opinion, can be achieved by the signature of the officer concerned. In default of this formality there is not, in my opinion, a complaint of which the Magistrate can take cognizance . . . . . in default of a complaint there was no jurisdiction to take cognizance of the offence."

In *Tonkyn's* case the point was taken after the defendant had pleaded to the summons and claimed trial. Neal J said that he had grave doubts as to the correctness of Buhagiar J.'s decision in *Chia's* case, but held that in any event the provisions of section 173 of the Criminal Procedure Code which sets out the procedure to be observed by Magistrates in summary trials were mandatory and that once an accused person appeared before the Court, however he came to be there, the Court was bound to proceed with his trial in accordance with the provisions of the section.

In *Brain's* case Smith J. in effect disagreed with Buhagiar J. He apparently agreed with Neal J. that once a defendant was before the Court the Court was bound to proceed with his trial.

In the present case Hill J. expressed agreement with what was said by Neal J. in *Tonkyn's* case and allowed the Public Prosecutor's appeal against the Magistrate's order of discharge. In view, however, of the apparent conflict of authorities he gave his certificate under section 34 of the Courts Ordinance to enable the appeal to be reheard by this Court.

The question involved in the appeal calls for the consideration of certain sections of the Criminal Procedure Code. It is, however, important to observe that the jurisdiction of Subordinate Courts to try criminal offences is not given by anything contained in the Criminal Procedure Code but by section 63 of the Courts Ordinance in the case of the Sessions Court and by section 85 of the same Ordinance in the case of the Court of a First Class Magistrate. The Criminal Procedure Code merely regulates the way in which that jurisdiction is to be exercised. In that respect it differs from the Indian Criminal Procedure Code which itself confers jurisdiction on most of the Subordinate Courts in India.

The relevant provisions of the Criminal Procedure Code are as follows.

Section 128 provides that subject to the provisions of the Code a Magistrate may take cognisance of an offence upon receiving a complaint "as defined by this Code" and by section 2 a "complaint", is defined as an "allegation made orally or in writing to a Magistrate with a view to taking action under this Code that some person whether known or unknown has committed or is guilty of an offence". Here it should be observed that section 128 differs from section 190 of the Indian Code in two important respects. It does not require, as does the Indian section, that to enable a Magistrate to take cognisance of an offence the complaint shall be of facts which constitute an offence but only that the complaint shall be as defined by the Code, that is to say an allegation that some person has committed an offence. Nor does it provide, as does the Indian section, that a Magistrate may take cognisance of an offence on a report of facts constituting an offence by a police officer or on information received from a person other than a police officer.

Then section 133 provides that when a Magistrate takes cognisance of an offence on complaint he shall examine the complainant upon oath but it is expressly stated that this section is not to apply to a complaint of an offence where a summons is applied for by a Police Officer and the following sections 134 and 135 clearly only apply where the complainant is examined on oath under section 133 and therefore cannot apply where the summons is applied for by a Police Officer. Section 136 provides that if in the opinion of the Magistrate there is sufficient ground for proceeding then in a summons case he should issue a summons for the attendance of the accused. When the accused appears, section 173 provides for his being charged and tried.

In connection with the commencement of criminal proceedings in a Magistrate's Court there may be three things. There may be an application for a summons. A Magistrate may, of course, issue a summons in certain circumstances without a formal application and the Code does not in terms provide for the making of any application but that such an application may be made is clearly contemplated by section 133(ii). Then there may be an information and there may be a complaint, but an information and a complaint are entirely different things and the failure to distinguish between them can lead to very great confusion in thought. An information is a statement relating to the commission of an offence made to a Police Officer under section 107

of the Code and a complaint is an allegation made to a Magistrate with a view to his taking action under the Code.

In the present case the statement made by the taxi driver was not the complaint. It was the information. The complaint was what appears on the front of the form, that is to say the allegation addressed to the Magistrate that Mr. Leonard had committed the offence of dangerous driving. It is true that the front of the form is not headed "complaint" but "application for summons" and it is true that the body of it refers to the information, presumably as a convenient way of furnishing details as to the time and place of the alleged offence necessary for framing a summons. It is impossible, however, to see any reason why the same document should not be both an application for summons and a complaint and in our view in the present case it complied with all the requirements of the Code necessary to constitute a complaint on the basis of which the Magistrate must under section 128 take cognisance of the alleged offence. It was an allegation made to a Magistrate with a view to his taking action under the Code that a person had committed an offence. The questions of whether or not it was signed (though in the present case it was in fact signed) or indeed was in writing at all or whether it stated the facts alleged to constitute the alleged offence were wholly irrelevant and once it was made to him the Magistrate was bound to take cognisance of the offence alleged. Having taken cognisance of it he was bound to proceed to issue a summons if in his opinion there was sufficient ground for proceeding.

We are accordingly of the opinion that the present appeal should be allowed and the order of discharge made by the Magistrate should be set aside. The case should be remitted to the Magistrate to be dealt with according to law.

We would add that in our opinion Police form No. 52 is not an altogether satisfactory form. Even with present-day methods of dealing with summonses and charge sheets in Magistrate's Courts some such form is, if not strictly necessary, probably desirable but we think the Commissioner of Police should take advice with a view to having a new form drafted.

Appeal allowed.

Solicitors: *Shearn Delamore & Co.*

LAI CHENG LIM v. THE CITY COUNCIL OF GEORGE TOWN, PENANG

[O.C.J. (Rigby J.) August 21, 1959]

[Penang — Civil Suit No. 61 of 1959]

Master and Servant — Employment — Damages for wrongful dismissal — Right of City Council to remove at pleasure — Municipal Ordinance (S.S. Cap.133), s.16(5).

Local Authority — Employment by — Removal from office without cause stated, without notice and without hearing.

This was a claim by the plaintiff for damages for wrongful dismissal. The plaintiff was employed by the City Council of George Town, Penang as a Building Inspector. Complaints were made by two stall holders that the plaintiff had asked them to pay him for giving permission to carry on their business in stalls put up by them and for not taking action against them under section 144 of the Municipal Ordinance for erecting unauthorised structures. The complaints were investigated by a Committee of Inquiry set up by the City Council and after a hearing at which the plaintiff was given opportunity to cross-examine the witnesses and to put forward his case, the Committee found that the charge of corruption preferred against him had been fully proved. The finding of the Committee was accepted by the City Council and the City Council resolved that the plaintiff be removed from his office. The plaintiff was dismissed from office by a letter dated February 28, 1959 and he thereupon instituted proceedings by a Writ of Summons issued on March 10, 1959.

Held: the defendants, by virtue of section 16(5) of the Municipal Ordinance, were entitled to dismiss the plaintiff at pleasure and without notice and therefore the claim for damages for wrongful dismissal must be dismissed.

Cases referred to:—

(1) *Brown* v. *Dagenham Urban District* [1929] 1 K.B. 737.

(2) *Short* v. *Poole Corpn.* [1926] Ch. 66.

(3) *McManus* v. *Bowes & Ors.* [1938] 1 K.B. 98.

(4) *R.* v. *Darlington School Governors* 6 Q.B. 682.

(5) *In re Teather* 19 L.J. (M.C.) 70.

CLAIM for Damages.

Jag-Jit Singh for the plaintiff.

Eusoffe Abdoolcader for the defendants.

Cur. Adv. Vult.

Rigby J.: In this action the plaintiff claims damages as against the City Council of George Town, Penang, for wrongful dismissal.

At the time of his dismissal the plaintiff was employed by the City Council as a Building Inspector (Town Division). He had 30 years' service with the City Council and its predecessors in title, the Municipal Corporation, and was due to retire in a year's time.

[After stating the facts of the case, which for the purposes of this report is summarised in the headnote above, the learned Judge continued:]

The defence raised has been twofold. First, the defendants say that they were under no obligation to set up any Committee of Inquiry before dismissing the plaintiff; that in so setting up a Committee of Inquiry they acted in accordance with the principles of natural justice, and essential fairness, that a man should not be condemned until he has had an opportunity of being heard. They contend that as a matter of law, upon a proper interpretation of section 16(5) of the Municipal Ordinance, the plaintiff was at all times during his employment with the defendants liable to be removed from office without cause stated, without notice and without hearing.

Secondly, they contend that on the facts they were fully entitled to dismiss the plaintiff for proved misconduct. Since I am satisfied that this action must be dismissed on the first ground, in fairness to the plaintiff I propose, first, to say a few words on the second ground. There can